SINGAPORE REPORTS

Philip Securities (Pte) v Yong Tet Miaw

HIGH COURT (SINGAPORE) – SUIT NO 4108 OF 1986 (SUMMONS-IN-CHAMBERS NO 6417 OF 1987)
THEAN J
30 JUNE 1988

Civil Procedure – Judgment entered for sum greater than what was due – Application for amendment of – Jurisdiction of court to amend judgment – Whether jurisdiction exists – Whether judgment has to be set aside entirely – Rules of the Supreme Court 1970, O 19 r 9

The defendant applied to set aside a judgment in default of defence obtained by the plaintiffs, contending that the judgment was signed for a sum greater than what was due to the plaintiffs. The plaintiffs were alerted of the irregularity in the judgment entered and applied for it to be amended. Both applications were heard by the registrar and at the conclusion he dismissed the defendant's application and allowed the plaintiffs' application to amend the judgment. The defendant appealed against the decision of the registrar.

Held, dismissing the appeal: (1) Where a judgment has been entered in default of defence for an amount in excess of that which is due, the court has jurisdiction to amend the judgment instead of setting it aside. Order 19 r 9 of the Rules of the Supreme Court 1970 empowers the court to set aside or vary a judgment entered in default of pleadings on such terms as the court thinks fit. The learned registrar was entitled under this rule to amend the judgment.

(2) Amendment made by the learned registrar could also be supported and justified under O 20 r 11.

Cases referred to
1 *Muir* v *Jenks* [1913] 2 KB 412 (folld)
2 *Armitage* v *Parsons* [1908] 2 KB 410 (refd)
3 *Navimprex Centrala Navala* v *George Moundreas & Co SA* (1983) 127 Sol J 392; The Times 21 March 1983 (folld)

Legislation referred to
Rules of the Supreme Court 1970 O 19 r 9, O 20 r 11

Anggerek Chua Wee Lee (Miss) for the plaintiff.
Daniel Williams for the defendant.

Cur Adv Vult

Thean J: This appeal arose out of two applications before the registrar, namely, an application by the defendant to set aside a judgment dated 12 September 1986 entered by the plaintiffs in default of defence and an application by the plaintiffs to amend the judgment. Both the applications were heard together by the registrar, and at the conclusion he dismissed the defendant's application but with costs to the defendant, and allowed the plaintiffs' application to amend the judgment. Against that decision, this appeal was brought, and after hearing the parties I dismissed the appeal with costs.

In the statement of claim endorsed on the writ taken out on 11 July 1986 the plaintiffs claimed a sum of $298,779.25 representing the balance due and owing to the plaintiffs in respect of or in connection with sales and purchases of shares transacted by the plaintiffs for or on account of the defendant and for commission, service charges and interest. The writ was duly served on the defendant and an appearance was entered on his behalf by his solicitors. No defence, however, was filed, and on 12 September 1986 judgment in default of defence for the amount of $298,779.25 together with interest and costs was entered.

About one year later, on 18 September 1987, the defendant took out the application (summons-in-chambers no 6417 of 1987) for an order to set aside the judgment and also for leave to defend the action. In support of the application, the defendant filed an affidavit alleging, inter alia, that certain shares in an Australian company were deposited with the plaintiffs as security pursuant to an agreement made with the plaintiffs and that these shares were to be released and returned to the defendant upon payment of a sum of $100,000 and that subsequently the plaintiffs refused to release these shares and refused to accept payment of the said sum of $100,000. The defendant then referred to an affidavit affirmed or sworn by the plaintiffs' representative, Koh Bee Yong, in bankruptcy proceedings taken out against the defendant where the deponent said that the plaintiffs had received proceeds from the sale of part of the shares from brokers on 5 August 1986, while the proceeds from the sale of the remaining shares were received by the plaintiffs from the brokers on 10 December 1986. The defendant therefore said that in entering judgment in default of defence for the entire sum claimed, namely, $298,779.25 and interest, the plaintiffs had signed judgment for a sum greater than what was then due to them and therefore the judgment was irregular and ought to be set aside. By this application and the defendant's affidavit, the plaintiffs were alerted of the irregularity in the judgment entered, and on 1 October 1987 the plaintiffs took out the application (summons-in-chambers no 6696 of 1987) for an order, inter alia, that the judgment in default of defence be amended by substituting $292,450.81 for $298,779.25. In support of the application, Koh Bee Yong on behalf of the plaintiffs in her affidavit affirmed on 1 October 1987, amongst other things, acknowledged that the plaintiffs held the shares of the defendant as security and that some of the shares were sold in July 1986 realizing a net amount of $6,328.44, and that this sum was received by the plaintiffs from their brokers in Australia on or about 1 August 1986 and was credited to the account of the defendant on or about 5 August 1986. The plaintiffs admitted that in entering judgment they had inadvertently omitted to give instructions to their solicitors of the receipt of this sum

and credit was not given for this sum. On this basis, clearly the judgment could not stand and had to be set aside or amended. The learned registrar on the material before him decided that it ought to be amended and he made the order accordingly.

In my opinion, the learned registrar was plainly right in his decision. Where a judgment has been entered in default of defence for an amount in excess of that which is due, the court has jurisdiction to amend the judgment instead of setting it aside. Order 19 r 9 empowers the court to set aside or vary a judgment entered in default of pleadings, such as the judgment here, on such terms as the court thinks fit. In this case, the plaintiffs had inadvertently entered judgment for the whole amount claimed without giving credit for the sum of $6,328.44 representing the net proceeds from the sale of the shares received by the plaintiffs for the account of the defendant. In these circumstances, the learned registrar was entitled under this rule to amend the judgment by reducing the amount to $292,450.81.

In *Muir* v *Jenks*[1] the plaintiff signed judgment in default of appearance for a sum in excess of that which was due to him. On an application by the defendant to set aside the judgment, one of the points taken by counsel for the defendant in the argument was that the judgment was irregular on the ground that it was signed for the wrong amount. It was suggested to the plaintiff by the Master hearing the application that the error should be rectified but counsel for the plaintiff took the stand that as the bankruptcy notice was served for the right amount nothing could be gained by rectifying the judgment. The judgment was not set aside by the Master and his decision was affirmed by Bucknill J. On appeal, the Court of Appeal held that the judgment was wrong and set it aside. Buckley LJ in his judgment said, at pp 415 to 416:

> The point was taken before the Master, who suggested that the judgment should be amended as being wrong through an accidental slip, but counsel for the plaintiff, so far from seeking to have the judgment put into proper form, took the view that no good was to be obtained by that course and elected to stand by his judgment as it was ...
>
> It is the duty of the creditor if he obtains a wrong judgment to have it set right. It is not the duty of the debtor against whom he has obtained the judgment to do so. The question therefore does not turn upon delay by the debtor. The position is this. Here is a judgment which is wrong. The person who holds it has not sought to set it right, on the contrary he has said that there was no good in doing so.

Later, he said, at p 417:

> However, *Hughes* v *Justin* [1984] 1 QB 667 is an authority for the following proposition: If the plaintiff in the absence of the defendant, proceeding properly under the rules, signs judgment for a sum in excess of that which is due to him, the defendant is entitled to have that judgment set aside, unless the party who holds the judgment applies as he may to reduce it to the proper amount. If application to amend be duly made it may be right not to set the judgment aside but to reduce it to the proper sum; but unless the party who holds the judgment elects to have it put right, then upon the authority of *Hughes* v *Justin* it seems to me the defendant is entitled to say 'This is a wrong judgment, set it aside.' In the case of *Armitage* v *Parsons* [1908] 2 KB 410 the right to amend which I have mentioned was exercised. The application there was to set aside the judgment, but the judgment was reduced. The party by mistake had charged £5 6s instead of £4 14s for costs. He had exceeded the proper amount by a trifling sum of 12s, and the court decided that they were not driven to set aside the judgment when the party who held it asked them to reduce it to a proper sum. That is the position of the authorities. In the present case the party holding the judgment has never availed himself of that right to bring it down to a proper sum. He has issued a bankruptcy notice upon the footing that the judgment is right, and at the same time by giving credit in the bankruptcy notice for £20, which was paid before the judgment was signed, he has, on the face of the notice itself, affirmed that the judgment was wrong.

Muir v *Jenks*[1] is a clear authority on the point that where a judgment was entered in default of appearance (or default of defence) in excess of the amount that is due, the defendant is entitled to have the judgment set aside unless the plaintiff applies to have the amount of the judgment reduced to the correct amount. That precisely was what happened in this case. The application to set aside the judgment and the application for correcting the judgment came before the learned registrar and he exercised his discretion by refusing to set aside the judgment but by amending the judgment to reflect the correct amount. That discretion was, in my view, properly exercised.

It was argued on behalf of the plaintiffs, and I fully agreed, that the amendment made by the learned registrar could also be supported and justified under O 20 r 11, and counsel cited in support *Armitage* v *Parsons*.[2] In that case, a judgment was signed in default of appearance and due to an error the amount included in the judgment for costs exceeded by a few shillings the amount properly allowable for costs. The defendant applied to set aside the judgment on the ground of irregularity. On hearing the application, the district registrar refused to set it aside but amended it by reducing the amount accordingly. On appeal, the judge affirmed his order. On further appeal, the Court of Appeal dismissed it. In his judgment, Sir Gorell Barnes, President, said at p 415:

> In my opinion, O XXVIII r 11, which provides that 'clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion or summons without an appeal' enables us to deal with this case so as to do substantial justice.

Later, in conclusion, he said, at p 417:

> To my mind it is clear, as a matter of good sense and justice, that this was an accidental slip which under O XXVIII r 11

ought to be corrected, and that the whole judgment should not be set aside because of a mistake to the insignificant amount of 12s. I do not think that by so amending the judgment any of the rules or any principle of law is infringed. For these reasons I think that the appeal should be dismissed.

Very recently, the Court of Appeal in England in the case of *Navimprex Centrala Navala* v *George Moundreas & Co SA*[3] held that under O 20 r 11 of the Rules of Supreme Court (which is in pari materia with O 20 r 11 here) the court had jurisdiction to correct mistake in the judgment which had arisen out of an accidental slip or omission made by the plaintiffs or their advisers. In that case, judgment in default entered against the defendants contained an error caused by the failure of the plaintiffs or their solicitors to inform the court of the two items of the claim totalling $63,400, which should have been excluded, and in consequence the judgment sum exceeded the amount to which the plaintiffs were entitled. The defendants applied to have the judgment set aside and the plaintiffs applied to have it amended so as to exclude the two items and to reduce the judgment sum accordingly. Mustill J (as he then was) amended the judgment, which was for an amount of over $1,000,000, by reducing it by a sum of $63,400 under O 20 r 11. His decision was affirmed on appeal by the Court of Appeal.

Apart from the irregularity, the defendant before the learned registrar and before me had not shown any defence on the merits. It was contended by counsel for the defendant that the plaintiffs had sold the shares of the defendant at a price or prices very much below the market value and this was a point of dispute between the plaintiffs and the defendant. I rejected this argument. Apart from a bare allegation made to this effect, the defendant had not provided any material in support. At any rate, assuming that there was any ground for such a dispute with the plaintiffs, that was not a defence to the plaintiffs' claim for the balance due and owing. The defendant is at liberty to initiate fresh proceedings against the plaintiffs for damages for breach of the agreement with regard to the holding of the shares as security and for negligence in the sale of the shares.

In the circumstances, the defendant was not entitled to be given leave to defend, and as the plaintiffs had applied to amend the judgment by reducing the appropriate amount the only and proper course to take is to amend the judgment on terms as the learned registrar did.

Order accordingly.

Solicitors: *Lee & Lim; Lee Williams & Associates.*

Reported by *Ng Sheau Jiuan*

Tan Bok Eng v Lim Meng Kok

HIGH COURT (SINGAPORE) – DISTRICT COURT APPEAL NO 24 OF 1987
THEAN J
2 JUNE 1988

Tort – Negligence – Road accident – Inference of negligence – Defendant to rebut

The plaintiff, who was the pillion rider of a motorcycle ridden by the second defendant, was injured when the motorcycle collided with a taxi driven by the first defendant. The plaintiff claimed damages for negligence against the defendants. The claim against the first defendant proceeded to trial in the district court. At the conclusion of the trial, the court dismissed the plaintiff's claim holding that the plaintiff had failed to prove that the road accident was caused by the negligence of the first defendant. Against that decision, the plaintiff appealed.

Held, allowing the appeal: (1) The trial court had misdirected itself in law. On the facts, the proper inference to be drawn is that the collision was caused either by the negligence of both the defendants or by the negligence of the first or second defendant. It is for the first defendant to rebut this inference of negligence on his part. The trial court should have considered whether on the evidence the first defendant had succeeded in displacing the case against him.

(2) On a review of the evidence, the first defendant was in part to blame for the accident. The claim of the plaintiff against the first defendant must succeed.

Cases referred to

1 *Baker* v *Market Harborough Industrial Cooperative Society Ltd* [1953] 1 WLR 1472 (refd)
2 *France* v *Parkinson* [1954] 1 All ER 739 (refd)
3 *Loh Saik Pew* v *Tan Huat Chan* [1976] 2 MLJ 1 (refd)

CP Lee for the appellant.
Wong Ching Hoong for the respondent.

Cur Adv Vult

Thean J: On 25 January 1984 at about 11.15 pm, the plaintiff, who was then an infant, was riding on the pillion of a motorcycle, JAV 2966, ridden by the second defendant; they were travelling along Clementi Road towards Upper Bukit Timah Road. They reached the traffic-controlled junction of Clementi Road and Clementi Avenue 2, and while they were crossing the junction and going straight towards Upper Bukit Timah Road, a motor taxi, SHA 152 U, driven by the first defendant and coming from the opposite direction, entered the junction, turned right going towards Clementi Avenue 2 and collided with the motorcycle, in consequence of which the plaintiff sustained injuries. He brought this action, suing by his father and next friend, against the first and second defendants, claiming damages for negligence on the part of both or either of the defendants. The second defendant did not defend the claim and interlocutory judgment was entered against him. The claim against the first defendant was, however, resisted and proceeded to trial.